

## **UTILITY CONSUMER PARTICIPATION BOARD**

September 24, 2007

### **MINUTES**

A special meeting of the Utility Consumer Participation Board was held Monday, September 24, 2007 in the Ottawa Building, 4<sup>th</sup> Floor Training Room, Lansing, Michigan.

#### **I. Call to Order**

Chair Alexander Isaac called the meeting to order at 10:07 a.m. Board members present: Harry Trebing, Ron Rose, Sister Monica Kostielney and Alexander Isaac. Members absent: Marc Shulman. Other **attendees**: Michelle Wilsey, LeAnn Droste, Terri Eklund, Donald Keskey, David Shaltz, John Liskey, Robert Nelson, Ron Callen, Elaine Tycocki, James Ault, Tim Sturgis, William Peloquin.

#### **II. Agenda**

Item IX was corrected to item VI. Agenda was accepted with the correction. Chair Isaac asked for public comment. There was none. Participants were invited to introduce themselves.

#### **III. Minutes**

No action taken.

#### **IV. Correspondences**

The following correspondences were received and placed on file:

1. MEC and MCAA grantee responses to questions submitted by Harry M. Trebing regarding 2008 grant applications. (Keskey)
2. RRC grantee responses to questions submitted by Harry M. Trebing regarding 2008 grant applications. (Shaltz)
3. AARP grantee responses to questions submitted by Harry M. Trebing regarding grant applications. (Nelson).
4. RRC Grant Application Amendment (deletion of a participating agency). (Shaltz)
5. AARP Grant Application Amendment (increasing proposed budget). (Nelson)
6. Major Action Summary of 8/27/2007 UCPB Board Meeting. (Wilsey)
7. RRC Memo to the Board responding to general questions regarding rates, policies and other administrative issues. (Shaltz)

Trebing noted that he had not received the RRC grantee response to his questions. Shaltz noted that he had included him in the distribution list and confirmed the email address. Wilsey provided Trebing with a copy. Trebing noted that his comments on the applications were not intended to shape the research or approach. The purpose is to better understand the viability of the proposals.

#### **V. Old Business**

1. AARP Grant Application – Robert Nelson discussed the AARP grant proposal request for funding to intervene in the Detroit Edison and Consumers Energy PSCR Plan Cases focusing on two primary issues – energy efficiency and Midwest Independent System Operator (MISO). Priority one deals with energy efficiency. He discussed the UCPB's ability to grant funding for energy efficiency and concluded that, in his opinion, the Board does have the authority to grant funding for energy efficiency programs. He cited the following to support his case: 1) the Michigan Public Service Commission's PSCR Order for Consumers Energy (last August) indicated that funding for energy efficiency rate design would be appropriate in the context of an Act 304 proceeding; 2) the proposal is consistent with previous UCPB grant funding for energy conservation and energy efficiency issues; 3) the court precedent restricting the ability of the Board concerns the proposition that the Commission cannot order a specific program, a specific DSM or energy efficiency program in their ruling; 4) Section 6m(12) of Act 304 states that for

purposes of making grants the Board may consider energy conservation. He further discussed the MPSC integrated resource program. The IRP process was eliminated in 1997 as competition was introduced to the electric industry. However, competitive conditions have not materialized and there are efforts to re-regulate the industry. IRP therefore becomes important again. It was contemplated in the 21<sup>st</sup> Century Energy Plan and is the subject of proposed legislation in Michigan. While this has been lacking in Commission Orders, it is time for reconsideration of the issue.

The second priority regards the Midwest Independent System Operator. He noted that transmission costs for the bundled utility customer in Michigan have doubled in the last three years since inception of the MISO Day 2 market. Detroit Edison, pursuant to the PSCR Order issued last month has a 50% reserve margin, well above virtually every other utility in the Midwest region. It is also above the level MISO contemplates for a system wide planning reserve. They suggest reducing the reserve margin could potentially result in significant customer savings. The Commission's last Order directed the parties to examine planning reserve in the next Edison PSCR Plan case and to consider what MISO is doing in this area. He responded to Dr. Trebing's questions regarding their ability to engage in discovery of utilities with regard to MISO. He discussed his experience in a previous case where they were successful in getting legitimate information through discovery. Trebing noted that case dealt with locational marginal pricing. Nelson said that was one of several issues and explained the case in more detail.

Chairman Isaac asked Mr. Liskey if he, on behalf of the Attorney General's Office had any issue or matters of concern related to the AARP grant application? Isaac noted that he was asking specifically in regard to the legal compliance of the application with the governing statute or case law. Liskey said he would echo the communications sent to the Board via email by Michael Moody regarding energy efficiency issues. These were included in the AARP application. There is a very narrow window in which the Commission seems to entertain that issue. We don't have an opinion as to whether or not Mr. Nelson will be successful in raising the energy efficiency issues. Isaac responded that that was not the question he posed. The question was whether the proposal itself is in legal compliance with statute or case law? Liskey responded, "with the caveat that I just mentioned, we don't see any problems with it." Isaac noted that he would like Mr. Liskey to consider this question for each of the proposals and to offer a recommendation on the record advising the board of the legal compliance of the application with governing statute and case law. He also asked Mr. Liskey to state, after the matters are discussed and decisions rendered by the Board, if the AG counsel has any objection to DLEG presenting the contract to the Administrative Board for approval. Liskey noted that the Bureau Chief was not comfortable with AG counsel doing a review on all applications. They are comfortable responding to specific questions that the Board has. Mr. Moody has prepared a checklist for the Act to assist in the Board's review. Isaac said that would be incorporated in the future procedure. However, he requested input on today's proposals. Rose stated that the question that he would ask the Attorney General is do you have an objection to this Department approving the grants for approval by the State Administrative Board? Based on what Mr. Liskey indicated their position is, the matter can't be taken up today but the Board should take it up at a later date. Liskey stated that he didn't think there was a problem with that. He said to respond to Mr. Isaac's question specifically, they do not see any red flags. Rose asked if he therefore had no objection to either the approval or the submission to the Ad. Board? Liskey responded, "right".

Isaac asked for Board questions regarding the AARP proposal. Trebing first commented on the energy efficiency study. He has no problems with the concept. His concern is that the same topic is presented by both Mr. Nelson and Mr. Keskey, and he is not certain what the MPSC staff is doing. Mr. Nelson indicated that neither the Commission staff nor the AG's office is working on this. He would like verification from the Commission that they do not have the resources to pursue the topic. Then, in that case, he feels the Board should fund it. He felt the MISO issue is potentially groundbreaking work. However, the Midwest Monitor's Report was limited and he wasn't sure whether they would be able get information and data to accomplish their objectives. Nelson discussed the ability to conduct discovery in the PSCR cases. Trebing reiterated that without a credible source of information and data, he was concerned that the results of the study may fall short of expectations.

Chair Isaac stated that the procedure that he wanted to follow was to entertain a positive motion to approve AARP of Michigan for \$140,000, if someone wants to make that motion. Then they will entertain further questions and discussion from the Board.

Rose asked the representatives from utilities if they had any objections to the proposal set forth by AARP. Tycocki noted she represented a gas company. Ault stated that he was not in a position to object for either Consumers or Edison. Rose asked if he was attending to raise any concern with or objection to the grants, particularly the one from AARP. Ault asked if he meant in regard to the legality of the grant process. Rose added, "Under 304". Ault said it sounded like they had an argument. He thought that you needed to have a good faith argument that it relates to a 304 issue. He said the transmission cost flow in the PSCR case seemed to be one. Rose noted that their counsel advised that there did not seem to be any problems. He asked SEMCO if it was something that would affect them. Tycocki responded no, because it was an electric issue.

Kostielney asked for clarification of the amount available for grants. Eklund replied that the budget is not approved as of today. The requested appropriation is \$950,000. Five (5) percent of that is set aside for administrative support. That leaves \$902,500 to grant out if the appropriation is passed. Wilsey noted that the grant requests were less than the requested appropriation.

**Sister Monica moved, second by Rose, and motion failed to approve the AARP Michigan Grant Request in the amount of \$140,000.** Discussion on the motion was as follows: Rose commented that his concern was similar to Trebing's – that, given the track record of pursuing energy efficiency issues, the Board would invest funds and not realize positive results. He suggested AARP pursue discovery at their own cost and reapply for UCRF funding when they determine if sufficient information is available to complete the study. Nelson responded that AARP would not authorize him to proceed without funding. Liskey clarified that the UCPB would not be able to award a grant for previously performed work. Rose concurred.

Trebing raised the issue of possible duplication between AARP and MEC on energy efficiency issues. He also asked Mr. Nelson if partially funding the request with respect to MISO would put them in a better position to state with certainty that the data is available to complete the study? Mr. Nelson replied that the costs were conservative. They could possibly do discovery for less than \$140,000 but that will also be the information you need for the case.

Isaac asked Droste if she, as the administrator of the grants, saw any duplication in the proposals? She noted there appeared to be duplication but not knowing specific details of the intervention she had no idea if there was actual duplication. Nelson noted that given the case schedule there may not be opportunity to come back to the Board for additional funding as was suggested on the MISO issue. Isaac asked Wilsey for a recommendation. Wilsey suggested the Board could approve the grant for the full amount but condition expenditure on positive discovery. Droste said the Board could implement a budget with restrictions or conditions. Isaac and Trebing asked Nelson if he could breakdown the budget to include an amount for data collection. He responded affirmatively. Rose raised his concern with the Board's previous experience with the PIRGIM study. Isaac concurred that they did not want to provide seed money. Rose reiterated his position that AARP should fund the upfront costs of discovery and pursue funding with the Board if data is available. Kostielney asked why it is bad for the Board to do this and good for AARP? She is cautious about telling an organization how to spend its money. Trebing asked if he could breakdown funding for the MISO issues and energy efficiency? Nelson responded that MISO issues were budgeted at \$40,000 for each company. Trebing asked why the MPSC staff would not pursue the objectives of the 21<sup>st</sup> Century Report. Was there any support for the claim that the Commission staff would not take up the issue? Nelson noted that staff recently recommended to the Commission and the Commission approved the hiring of an outside expert to testify in a major rate case. They do not have the resources to participate in the major rate cases much less PSCR cases. Trebing stated that they needed to clarify the energy efficiency proposals of AARP and MEC. Nelson commented that he and Keskey had discussed coordinating their presentations. They have different approaches on the issues. Isaac noted that though the motion was defeated, the Board could offer another motion on this proposal later.

2. RRC Grant Application – Mr. Shaltz noted that he had reviewed the substance of the proposal at the last board meeting. He received questions from Dr. Trebing following the meeting. In regard to the question of looking at price manipulation by suppliers and brokers, it is not an issue included in the work plan because the MPSC does not have jurisdiction over those entities. He felt they would not be successful in discovery because of the lack of jurisdiction. What can be done in an Act 304 case and what they had done the previous year is investigate the awareness of the utilities of this problem and what they are doing to protect customers against price manipulation. In the last SEMCO and MichCon GCR cases the supply portfolios of the utilities were very heavily weighted toward pricing their supply contracts on the NYMEX. RRC argued that a more diversified approach to pricing should be used. This can be looked at more closely in the upcoming cases. Answers to the other questions in the Trebing memo were provided in the reply and he would address any questions the board had in regard to those. He noted that in response to a question from Mr. Shulman regarding budgets, that they did provide detailed budgets for each case in which they are proposing to intervene and an explanation of his billing practices. In regard to a question from Rose as to whether there is sufficient time in their work schedules to meet the commitments called for by the proposal, he provided a time analysis to show this is a minor portion of both his and the consultant's time. They would be willing to provide a certification to that effect.

Trebing replied that he is aware that the Michigan Commission cannot regulate the fuel price of natural gas. He provided several references to studies and reports that indicate there is substantial evidence that there is excessive speculation in the natural gas market and that the spot market is potentially distorted by false data. We are concerned with the final price that consumers pay in Michigan but if there is manipulation impacting that final price, we are concerned about that as well. My concern is whether there is any way you can find out if gas that is being purchased ultimately by Michigan customers is influenced or impacted by upstream manipulation? If so, perhaps it would be possible to work with to get reforms in the bidding process that prevent manipulation or collusive behavior. Trebing noted that each year RRC has cited more and more about hedging, storage, etc. He wanted more information as to what they found in the way of substance. Shaltz responded that they are reluctant to propose activities for the grant that they anticipate the Commission will reject or to utilize studies if they cannot establish a direct nexus between the study and the specific utility case in which they participate. He believes they will be most successful addressing these issues by examining the bidding practices of the Michigan utilities to see how well their practices identify the potential for harm or whether excess costs are coming through to Michigan consumers. Trebing further commented that the strong position of natural gas exacerbates the problem. Shaltz noted that while all the major utilities have fairly extensive bidding programs, the question is whether the bidding programs are set up to look at this particular problem. Trebing emphasized that was his point. Would it be possible to refine the process so that the potential exploitation from collusive bidding is minimized?

**Trebing moved, second by Kostielney and motion carried to approve the RRC grant in the amount of \$218,160.** Discussion on the motion was as follows: Rose asked if this was an area in which the Attorney General is participating (gas cost plan and reconciliation cases)? Liskey responded affirmatively. Rose asked if anybody in his office was looking at the issues discussed by Dr. Trebing with regard to collusion? Liskey did not know. Shaltz discussed the process of coordination with the Office of Attorney General. He noted that RRC has never, in the last 15-20 years that he can recall, presented the same evidence that an Attorney General witness has presented. They may discuss the same issue, but the analysis of the issue and the conclusions are always coming from a different place. That is one of the things required by the grant contract and something RRC pays attention to very closely. Rose stated that in response to his question regarding the proposed attorney rates in the grant proposal, the Attorney General indicated a rate of \$180 would be standard for this area of practice and quality of counsel (based on ABA statistics). Rose noted surprise that the expert witness rate was equal to the attorney rate. Shaltz responded that typically in this field expert witnesses are more expensive than the attorneys. Rose asked why the expert witness rate is higher in the RRC proposal than experts in the other proposals? Shaltz elaborated on the consultant's credentials and stated that his caliber merited the rate. Because of his experience, he is very efficient and finding the issues and doing the analysis. Rose asked

if he lowered his rate for purposes of the grant? Shaltz responded affirmatively. Rose asked if he was known by the Commission? Shaltz responded that he has participated in these cases for some time and he has a credible relationship with both the Commission staff and the utility staff. This has reduced the costs for discovery. Trebing asked why RRC requests equal funding for all utilities? Shaltz said the size of the utility doesn't determine the amount of time needed to audit and do discovery. Sometimes the issues presented in smaller utilities are more complicated. MGU for example has service territory in five or six different locations in the state. RRC's approach to budgeting is to request a fair, basic amount to do the audits and put together cases. As cases and issues evolve, they may request a redistribution of funds to pursue the more important or complex issues.

Isaac asked Liskey if he had any recommendations or comments on the proposal. Liskey reiterated that it was not the AG's role to give recommendations on specific proposals. He had no comments. Isaac asked Wilsey for comments. Wilsey noted that these are cases that they have pursued successfully in the past. Expansion of the topics per the discussion with Trebing would enhance the proposal. Another issue that has been discussed is awarding separate grants for each case. This is not anticipated for this grant cycle, but is a future issue for the Board.

Isaac recognized Nelson. Nelson noted that in regard to the AARP proposal, they are willing to be quite flexible in terms of how the Board may want to condition a grant. If a sufficient amount was granted to allow discovery, they could report back to the Board and request to continue further or not depending on the findings. We believe the MISO issue is important enough to pursue under conditional allocations. Isaac asked if the Board wanted to reconsider the proposal submitted by Mr. Nelson now or after consideration of the other proposals? Rose said he preferred something in writing. The Board would also have to undo the previous no vote in order to visit alternatives on the initial proposal. Kostielney stated she preferred to proceed with Keskey and then come back. Isaac agreed and recognized Mr. Keskey.

3. MCAAA and MEC Grant Applications - Keskey discussed his experts and the nexus of MCAAA to energy cost issues as they impact low income customers. The focus is on the gas side because that is where home heating shocks occur in wintertime. Their efforts in GCR cases are concentrated in two key areas: traditional issues involving gas costs and mitigation of cost volatility. MichCon is the most serious situation with respect to volatility due to the LIFO accounting system. Because of gas storage, it impacts Consumers energy as well. He discussed past case experience and results. He noted there have been some disappointments in terms of advancing energy efficiency, but there have been some successes that have resulted from pushing the issue. They have extensively researched Commission precedent, briefed all of the jurisdictional statutory past precedent of the Commission, and past court precedent to argue that the Commission does have jurisdiction to reimplement even more robust energy efficiency programs. He also noted that they have ongoing cases in the gas area – 2006 reconciliation cases for Consumers and MichCon and two court cases involving the NYMEX issues. The current grants end but the cases will continue. Isaac noted that Trebing had presented several questions to the grantee in advance. He asked Trebing to the questions he had at this time on both applications (MCAAA and MEC) submitted by Keskey.

Trebing asked who the other parties were that planned to appeal Detroit Edison's joint base rate case to the Supreme Court? Keskey noted that was part of the MEC proposal. He explained that all of the parties were appealing on separate issues. Trebing asked if anyone had joined with MCAAA on the spent nuclear fuel issue? No other party has formally taken a position. Trebing noted that he felt this was an immensely important issue. He noted that he would recommend NRRI take notice of this work and give it the national exposure it deserves. Trebing asked Liskey for an opinion of how far the Board pursues this if it continues to be shot down. It is not being shot down on the basis of the conceptual merit of spent nuclear fuel and the potential for misuse. It is being shot down under Act 304. Liskey said they could not advise the Board on how far they could go. The purpose of Moody's memo was to give the Board background on the issue. In this case that it has lost on appeal. The Board is independent by statute and the members make informed policy decisions. Keskey noted that SNF fees are collected under Act 304 for disposal. Nuclear fuel disposal is an expense expressly mentioned under Act 304. Further,

there is no decision on the appeals presently filed at the Supreme Court. There is no final ruling from the Michigan Supreme Court on spent nuclear fuel issues. There are some unpublished opinions but they are not binding precedent. If the Court decides to take the case, they may well consolidate all the cases and have briefing so that all the issues are dealt with. At this point, we do not know what the Court will do. He recommended not dropping a case at the Court of Appeals' level if you have a good issue and a good case. Trebing asked if Keskey concurred with Nelson's assessment of whether the Commission staff has the capability at this point to carry out the 21<sup>st</sup> Century proposals for efficiency, conservation, etc.? Keskey noted that case schedules have been extended due to lack of staff. There are many things the staff has difficulty handling because they are understaffed.

Keskey discussed the MEC Grant Application. It primarily deals with traditional issues and the SNF issue. Many of the proceeds and the money issues that are being generated from the purchase power agreement that was approved with the Palisades sale are now referred expressly by the Commission to the current Consumers Energy rate case. He extensively discussed experience and past efforts in energy efficiency cases and the merits of proceeding. They plan to pursue these issues further in the upcoming PSCR case in conjunction with the rate cases for Edison and Consumers. They are requesting funding for the upcoming PSCR cases for Edison and Consumers. He extensively discussed the range of issues they would cover. They are also requesting funding for participation in MCV cases dealing with proposed increases to purchase power costs and Consumers Energy's Balanced Energy Initiative.

Liskey noted that the contract for UCRF grants calls for Board approval prior to appeals. It is an issue that has been raised at the last two Board meetings. Keskey responded that their existing contract had included all Board appeals when it was approved. Liskey questioned if that applied to the Supreme Court appeal? Keskey said it included any and all court appeals. Keskey clarified that their existing grant was approved with budgets that included various PSCR cases and ongoing cases and court appeals. He noted that appeals sometimes proceed quickly and they need to have flexibility to respond. Keskey understood that the Board wanted to be informed about appeals that go from the Commission level to the court system. But I think once you are in the court system, you pursue it to a final decision. Liskey stated that he did not have a comment as to whether that interpretation is correct or not. However, it is important for the Board to decide whether or not, going forward, grants include all court cases.

**Rose moved, second by Kostielney, and motion carried to approve the MCAA grant in the amount of \$141,400 with the supplemental budget breakdown as presented to the Board by Don Keskey utilizing the lower end of the ranges listed for appeals.** Discussion on the motion was as follows: Rose asked if the grant application for this cycle says appeals have to be approved by the Board? Droste noted that it is not in the grant application. Rose said he would like to see that added in the future. Wilsey noted there was some overlap of cases between the last grant awarded to MCAA and this proposed grant. She asked if there were any remaining funds from the previously awarded MCAA grant? Keskey said no. They were awaiting final payment. Wilsey asked Keskey to confirm that there were no concurrent grant funds being drawn for the same cases or appeals in which they were involved? Keskey said that was right. Wilsey noted that the budget breakdown provided by MCAA included ranges that, at the high end, totaled \$165,400. She asked Keskey to confirm that if the Board approves the grant he understands that the total expenditure would not exceed \$141,400. He responded affirmatively. Wilsey recommended that MCAA proposal be handled as three separate grants: 1. the new 08-09 GCR plans for CECo and MichCon for a total of \$105,040 (\$104,000 + 1% admin fee); 2. the ongoing PSC proceedings for a total of \$30,300 (\$30,000 + 1% admin fee); and 3. appeals for a total of \$6,060 (\$6,000 + 1% admin fee). Included in the appeals would be the listed CECo and MichCon appeals and filings for new appeals (to preserve opportunity to participate). It would be the responsibility of the applicant to bring new appeals to the Board before proceeding. This is the model discussed at the last meeting. Isaac asked if new appeals would be treated as new grants or amendments to the existing grant? Droste noted that any process that would alter the grant would require Board approval. If it's a new appeal, it's going to be a new case and therefore a new grant. Rose asked whether on the issue of appeals, is should be a new grant or an amendment? Droste noted that if the application is approved for a total of \$141,400, that is what is submitted to the State of Michigan Administrative Board for approval. The

breakdown into three grants is for accountability and tracking. A budget needs to be provided for each of the cases that the grant represents. That will allow tracking of the dollars spent against each case – a concern of the Board following the audit. Rose asked if this aided DLEG as well as the Board? Droste replied that yes, this approach provides tracking of dollars spent on each case.

Rose asked Keskey if energy efficiency issues would be raised in reconciliation cases 14716-R or 14717-R? Keskey replied that they were raised in the plan cases. So that issue would not be raised in the reconciliation cases, although they potentially could be. Rose noted that cases 13902 and 14403 both deal with similar issues regarding statutory procedure and NYMEX. He questioned why are they pursuing two appeals on the NYMEX? The MichCon case involves more issues than the NYMEX. They are appeals with different companies that involve different applications of the issue. Rose questioned why go to the Supreme Court if there is a better case in the Court of Appeals? Keskey replied that he could not control the timelines. Rose commented that an adverse decision from the Supreme Court would really hurt the effort. Keskey noted that he hoped the Katrina case would arrive first. There are complementary facts in the cases which are compelling. Rose asked if he could file a motion in the Supreme Court to asking them to allow 14403 to bypass the COA and go to the Supreme Court, given similar issues in the case? Keskey noted that there are no funds currently to proceed. Also, he could appeal decisions in Katrina. Rose asked about removing the NYMEX issues from 13902 and rely on 14403? Rose noted that he was trying to avoid duplicity, not run the case. Keskey noted there are several cases that they do not appeal. But following through to the courts on important issues is an important aspect of any credible ratepayer defense program.

Wilsey asked if the Board wanted to amend the motion to approve the grant utilizing the three grant approach she outlined? Isaac noted that with the supplemental budget provided for each case and accepting the lower end of the ranges provided, they could approve the proposal as one grant in the amount of \$141,400. Droste noted that would be consistent with the way RRC submitted their budget.

**Trebing moved, second by Kostielney and motion carried to approve MEC/PIRGIM/EM in the total amount of \$191,900 with budget breakdowns and tracking by case.** Discussion on the motion was as follows: Keskey expressed concern about the status of ongoing cases. He requested a grant extension to fund work on the cases until the new grant took effect. Isaac noted that the administrative extension was denied. Droste noted that Keskey did file a subsequent request asking for the removal of the items that the denial was based on. However, extensions granted for encumbering funds had to be approved by September 15, 2007. Isaac noted that at the last meeting, that Keskey was advised to pursue resolution administratively if possible. Rose felt that Keskey preserved the issue since he filed his request prior to 9/15. Droste noted that all of the requests received prior to 9/15 included cases not covered by the grant. She had no authority to grant an extension that included new cases. Following the notice of denial sent on 9/15/2007, Keskey sent an email asking for the removal of the items from the request. Droste requested that a new request be submitted that reflected only the extension of time. That request was not submitted until 9/20/2007. Keskey explained the circumstances of the case and past practices that affected the outcome of this request. Isaac noted that he proceeded in a way that was unacceptable. Keskey vigorously argued for the grant extension of time only or for the Board to consider adding the Consumers Energy case. There is a balance in 07-02 of approximately \$35,000-45,000. There was extensive discussion of the remaining balance and timeline. Isaac noted there was a motion to table discussion of the Keskey extension request at the last meeting. **Kostielney moved, second by Rose and motion carried to remove MEC/PIRGIM Grant Amendment Request dated 8/24/07 from the table.** Trebing noted that there was a previous motion to approve the MEC/PIRGIM/EM grant. Wilsey noted that the detailed budgets submitted by Keskey totaled \$192,900 at the lower range. Keskey replied that they were asking for \$191,900. Wilsey asked if they would strike \$1,000 line item for potential appeals to balance the budget with the total grant amount. Keskey said there was not an inconsistency in having a range add up to more than the budget request. The commitment is to include the work within the budget request and keep the Board informed of what's happening in the cases. Wilsey noted that the approval is based on these line items in the budget. She expressed concern that Keskey viewed the approval as a lump sum not associated with line items. She

asked the Board to clarify their intent. Rose stated that the Board is not doing lump sums anymore. That is what he believed was agreed upon. Isaac concurred. Keskey said to remove the \$1,000 out of the court estimate but don't remove the line item. The Board agreed if there was a need to reallocate funds between line items, he could approach the Board for approval of a grant amendment. Isaac noted that Droste could approve a certain percentage without coming to the Board if the contract allows. Droste clarified that was between line items (e.g., legal and expert witness) for a particular case – not between separate cases. Rose responded affirmatively. Droste clarified that moving money between cases would require an amendment from the Board. Rose again responded affirmatively. Isaac asked Droste if the budget proposal provided with the grant is what she uses for the contract. Droste said she would ask each grantee to provide her with a budget page for each of these cases as the dollar amount was approved. For example, for the RRC each of the cases was \$27,270. RRC must now provide a budget for each of the eight cases awarded under that grant. MCAAA must provide a budget for \$79,000, a budget for the \$25,000, a budget for the \$10,000, etc. that represents each of the cases outlined in this document from which the Board is awarding grants today. That then becomes an attachment to the grant agreement. Trebing requested that future progress reports include not only what is happening on the case, but substantive comments with respect to the issues you are pursuing. Include interpretive comment so the Board can see what you are accomplishing. Liskey asked if the grants approved today include approvals for appeals? Isaac said he understood it did not include appeals, except for the initial filing. Appeals would have to be approved by the Board as a new item. Droste noted that in the grant agreement there is a section that states, "The grantee shall advise the Board of any Proposal for Decision issued by an Administrative Law Judge that is adverse to the objective of the grant. Board approval shall be required to appeal any Commission Order." Isaac clarified that the question raised by Liskey is whether there was any money for appeals in the grant approval. Liskey said that was important but is the intent of the Board to have grantees come to the Board for approval of appeals? Rose stated, yes we do and to add the word or words, Court of Record. Isaac asked if that change was for future proposals? Rose said he would like to see it in contracts for this grant cycle. Keskey asked if that would apply to filing exceptions to a PFD? Rose said that was not an appellate matter. Keskey noted that the budget requests he prepared for previous applications did include the cases plus appeals therefrom. They can add the procedure of asking for an appeal. Liskey noted that he wanted the contract language to match the intent. Isaac asked Keskey to clarify if the \$60,000 budget for requested for 15245 actually included the appeal or not? Keskey replied that it did not. Costs and procedures for initial court filings were discussed. Kostielney commented that to maximize the benefits of the grant's original intention, you would take it to its final state of appeal. It seems a continuum of work. If the Board changes the contract it ensure that the attorney can take this to appeal, because the funding was granted for a legitimate purpose, and the appeal is just carrying that out. Liskey just wants to be sure the Board and grantee recognize that there is a cap on the budget granted that does not automatically extend to appeals. Shaltz suggested that a provision to use grant funds to establish the appeal (as previously discussed by the Board) could be added if it is not in the current contract.

Rose asked why it was necessary to pursue energy efficiency, conservation, and resource planning in so many of the cases covered by MEC/PIRGIM/EM? Keskey noted that the Commission said in its own last Order that energy efficiency is relevant to an Act 304 case in terms of whether you want to offer a rate design approach to encourage energy efficiency. The rate cases are where the utilities are putting in some of their proposals. We will be strategic about raising those issues where they have a chance for success in either or both dockets. We are not repeating energy efficiency in PSCR cases that have been kicked out before. We are building on what the Commission expressly provided us the right to do. Nelson interjected that the AARP proposal also built expressly on the Commission Order. He commented that their proposal was turned down because of discovery problems with another aspect of their grant. He expressed concern that the decision was unfair and that it may be problematic with the Auditor General. Rose asked if he felt the Board should grant neither proposal based on the Auditor General's report? Nelson noted the statute required a diversity of grantees. Trebing noted that Nelson would have the opportunity to comment later. Rose continued his questions to Keskey regarding energy



efficiency. He noted the memo from Michael Moody cited several cases and circumstances in which energy efficiency issues were not accepted by the Commission, except in narrow circumstances. He asked Keskey if he felt their proposal fit into the narrow circumstances? Keskey said it did because they would follow through on the language obtained from the Commission that deals with the narrow circumstance, rate design. He further explained that in rate cases there will be issues raised by the utilities on things like resource planning and some energy efficiency ideas. Keskey noted that they wanted to pursue that as well because they were going on contemporaneously, and they directly affect costs under Act 304. Keskey presented arguments supporting participation on energy efficiency issues in both rate and PSCR cases. Rose asked if Keskey saw anything in the grants he has proposed that could be said to be inappropriate if they were approved with energy efficiency and conservation in them? Keskey replied that he did not see them as inappropriate at all. Rose noted that the PAYS America case was dismissed on grounds that they lacked standing as opposed to whether energy efficiency and conservation were appropriately in the case. Kostielney concurred. Rose asked Ault or Tycocki if they had any comments? Ault commented that it seemed the Board was running right back into the question of approving a grant for participation in a case that's not an Act 304 case. He noted he was not familiar with the details of the proposal. Rose asked if it was his position that energy efficiency and conservation do not fit in to the cases proposed. Ault responded generally not because the programs that you are talking about – energy efficiency and load management – are things that are done at the consumer level. Those would typically be handled through proposals in rate cases or in legislation. Rose asked Shaltz and Keskey if any of the work they are proposing in their grant or grants require them to get information from a utility that they are not sure they can get or not? Keskey noted that they are partially successful getting information on spent nuclear fuel issues. He noted discovery battles are somewhat common. Shaltz replied no. The utilities may make it difficult but if the information is relevant to an Act 304 proceeding a law judge would compel them to provide that information. Rose asked if either of their grants are predicated on the fact that if utilities did not respond, they were “dead in the water”. Keskey responded no, they had demonstrated that already.

4. Special Assistant Contract – Wilsey discussed the contract for services she submitted to the Board. Rose confirmed that the proposal is to increase the hours. Trebing noted the rate per hour remained the same. **Rose moved, second by Kostielney, and motion carried to approve the Special Assistant contract with Michelle Wilsey in the total amount of \$19,975 effective October 1, 2007-September 30, 2008 contingent on appropriation or approval by the Administrative Board.**

Isaac returned to the issue of the grant extension request by Keskey. Rose confirmed the following: that all new cases had been removed from the request; that no money is moving between line item budgets; that it is only an extension of time; and that the original request was made on August 24, 2007. **Rose moved, second by Trebing and motion carried to approve the request for extension without any new cases added to that grant.**

Isaac returned to the AARP Grant Application. Nelson noted that the entire grant proposal was defeated because of the problem with discovery on the MISO issue. MISO was one of two issues. The priority one issue was energy efficiency and conservation, a topic later approved by the Board in the MEC/PIRGIM/EM grant proposal. Given the mandate of Act 304 to have a diversity of grantees, he felt their grant should be awarded on the same basis. While they would coordinate with Keskey on these issues, he emphasized their proposal offered the ability to be successful on this issue. Discovery is not a problem. They offer innovative rate design that ties to the proposal under the Commission Order that Keskey cited last year where the Commission said that rate design is an appropriate Act 304 issue to pursue for energy conservation. He asked the Board to reconsider at least the priority one issue for UCRF grant funding. **Trebing moved, second by Kostielney and motion carried to approve the AARP application in part to include only the energy efficiency and conservation issues described in priority 1 of the proposal in the total amount of \$60,000.** Discussion on the motion was as follows: Rose asked how this proposal was going to complement what Keskey is doing, as well as how it was

distinguished from the MEC/PIRGIM/EM proposal. He asked that the motion be tabled until a response could be prepared and reviewed. Nelson explained that they had provided detail on the plan they would pursue, including what they felt was an innovative rate design issue. Rose asked how the proposal fit into the exceptions noted by counsel? He further pointed out that there was one freestanding proposal. Droste noted that earlier the energy efficiency cases represented \$30,000 of the total \$140,000 budget. Nelson noted it was actually \$60,000. Droste concurred and further noted that the other \$80,000 was for MISO. Droste asked if what was being verbally proposed was a grant award of \$60,000 to cover the energy efficiency cases? Nelson confirmed that it was. Isaac asked about the other \$80,000 (40/40) that is in the grant proposal upon which the motion was made? Nelson said that that was withdrawn based on the previous discussion. Droste reiterated that the new proposal is only addressing the energy efficiency dollars, which represents \$60,000 of the total \$140,000. Isaac concurred. Trebing added that he really strongly supports the concept of what AARP proposed with regard to MISO. He encouraged them to bring another proposal to the Board if they are in a better position with regard to data and information. Liskey again asked for the Board's intent on appeals to assure a meeting of the minds. Rose offered the following summary of the Board's intent: For the record, we are approving and have approved the following concept with regard to appeals. Be it known that appeals can come on very quickly; the Board does not meet often enough to address some of those emergency situations. Failing to address those emergency situations on appeal, we may end up losing the right to take the appeal. Therefore, we are approving within the confines some \$600-800 to file the claim of appeal within the parameters of an existing case budget. To advance the appeal beyond filing the claim of appeal it must be approved by the Board. Isaac noted that this would not constrain the organization from pursuing the appeal without funding from the UCRF. Trebing and Rose concurred. Droste noted that the grant agreement language will have to be changed to accommodate the policy on appeals as stated by Rose. Rose suggested Droste work with Liskey to draft appropriate language and send it to him for review via email. Isaac said that would be fine. Rose revisited the SNF issue and asked Keskey why he was not pursuing the issues? Keskey stated there are three consolidated to two cases in the Court of Appeals. MEC is an appellate in both of them. Rose asked how much money was involved in the cases? Keskey said there are several issues that are involved and hundreds of millions of dollars. The Commission did approve a refund surcharge of \$255 million for decommissioning funds. Proceeds issues were deferred to the rate case. Was the \$255 million dollar surcharge accomplished in the case through your effort or your clients and other people who are in the case? Keskey said yes. When multiple parties offer different evidence but end up with a similar result, the argument for adjustments is strengthened. You are not duplicating, you are supplementing and strengthening the record. Rose asked if this was the case with Nelson's client. Keskey felt they would work cooperatively with AARP and their combined effort would work well on the energy efficiency issues.

## **VI. Next Meeting**

Isaac noted that the next meeting was scheduled October 1, 2007. Rose proposed that the next meeting should be Monday, December 3, 2008. Trebing noted he would be in Baltimore but could participate by telephone. Isaac announced that the next meeting is scheduled December 3, 2008, 10:00 a.m., Ottawa Building, 4<sup>th</sup> Floor Training Room

## **VIII. Adjournment**

Chairman Isaac adjourned the meeting at 2:30 p.m.

*Note: Full transcripts of this meeting are available upon request.*